

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Wasserman	Team: Team # 8	CCRB Case #: 200903116	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 02/22/2009 12:15 AM	Location of Incident: Lenox Avenue & 137th Street	Precinct: 32	18 Mo. SOL 8/22/2010	EO SOL 8/22/2010	
Date/Time CV Reported Wed, 02/25/2009 4:55 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/02/2009 12:32 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Lynn Ruger	26344	937453	PBMN AC
2. SGT Robert Abramson	02187	905644	PBMN AC
3. Officers			PBMN AC
4. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Steven Caron	29386	938169	PBMN AC
2. POM Wilfredo Acevedo	26116	937938	PBMN AC
3. POM James Sepulveda	25657	892063	PBMN AC

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: Officers stopped the car in which § 87(2)(b) was an occupant.	
B. POF Lynn Ruger	Abuse: PO Lynn Ruger arrested § 87(2)(b)	
C. Officers	Force: Officers used physical force against § 87(2)(b)	
D. SGT Robert Abramson	Abuse: SGT Robert Abramson authorized the strip-search of § 87(2)(b)	
§ 87(4-b) § 87(2)(g)		

Synopsis

On February 22, 2009 at about 12:15 AM, the livery taxi in which § 87(2)(b) was a passenger was pulled over at West 137th Street and Lenox Avenue in Manhattan by officers identified as PO Lynn Ruger and PO Steven Caron of Patrol Borough Manhattan North Anti-Crime (**Allegation A**). PO Ruger and PO Caron pulled § 87(2)(b) out of the car and handcuffed him (**Allegation B**). After § 87(2)(b) had been handcuffed, additional officers from Patrol Borough Manhattan North, identified as PO Wilfredo Acevedo, PO § 87(2)(b) Sepulveda and Sgt. Robert Abramson, and unidentified uniformed officers arrived on scene. After § 87(2)(b) was placed in handcuffs, § 87(2)(b) was allegedly pushed to the ground, kned in the back and shoulder, kicked in the body and feet, pushed into a police auto by his neck and had an officer push their fist into his cheek (**Allegation C**). § 87(2)(b) was subsequently transported to the station house and strip-searched on the authorization of Sgt. Abramson (**Allegation D**). During this strip search, § 87(2)(b) was allegedly shoved into a radiator (**Allegation C**). § 87(4-b) § 87(2)(g)

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

Summary of Complaint

§ 87(2)(b) is a § 87(2)(b)-old black male with black hair and brown eyes who is 5'11" tall and weighs 150 pounds. § 87(2)(b) filed a complaint with IAB on February 25, 2009 (encl. 4). The CCRB received this complaint on March 2, 2009 (encl. 5a-5b). § 87(2)(b) was interviewed at the CCRB on March 9, 2009 (encl. 6a-6c).

A little after midnight on February 22, 2009, § 87(2)(b) was in a livery taxi, going from hanging out with his cousins at 118th street and Eighth Avenue in Manhattan to meet his fiancée at 147th and Seventh Avenue in Manhattan. After turning north onto Lenox Avenue from West 135th Street, the livery taxi was pulled over by an unmarked police car with flashing lights, which § 87(2)(b) saw in the mirror. § 87(2)(b) assumed the police wished to speak with the driver to check whether his license in order, although the driver had not run a red light or committed any other traffic infraction of which he was aware.

§ 87(2)(b) was wearing a black leather jacket and a burgundy Champion sweater and had an Ipod, his wallet, keys, cellphone and resume on his person. He did not have a gravity knife with him. § 87(2)(b) could not remember the name of the livery company or any identifying information about the taxi, other than that the taxi license started with T500 and the taxi driver was an African, who probably worked for "Malcolm" or "Harlem".

A white male officer in plainclothes identified in the course of the investigation as PO Steven Caron got out of the police car and directly approached the door to the back seat, where § 87(2)(b) was sitting. A white female officer in plainclothes identified in the course of the investigation as PO Lynn Ruger then exited the unmarked auto. PO Caron opened the rear door of the taxi and said "get out of the car" multiple times. § 87(2)(b) asked why. PO Caron stated that § 87(2)(b) was under arrest, without specifying the charges. § 87(2)(b) turned to the driver and asked if anything was wrong or if he was forcing him to go anywhere. The driver said no. § 87(2)(b) then asked if there was a warrant on him and PO Caron told him to get out of the car again. PO Caron reached into the car and attempted to physically remove § 87(2)(b) from the car, dragging him by his arm, before realizing that he was

restrained by a seatbelt. § 87(2)(b) attempted to dial 911 on his cell phone. PO Ruger leaped into the car onto § 87(2)(b)'s lap and tried to take the cell phone away from him, pinning his arm against the backseat of the car. PO Ruger unclipped the seatbelt, which trapped § 87(2)(b)'s arm. PO Caron dragged § 87(2)(b) out of the car by his arms and his jacket. § 87(2)(b)'s cell phone fell to the floor. PO Caron told § 87(2)(b) to get against the back of the car. § 87(2)(b) was pushed onto the back of the cab, with his chest lying against the car, by PO Caron or PO Ruger. PO Ruger grabbed § 87(2)(b)'s arm and twisted it above his head. PO Caron then grabbed § 87(2)(b)'s arm and twisted it as well. PO Caron and PO Ruger then handcuffed § 87(2)(b) against the back of the taxi. PO Caron and PO Ruger frisked § 87(2)(b) going into his pockets, as they walked him to their car, which was behind the taxi.

At this point, two other police cars had arrived, an unmarked car and a squad car, with several officers including PO3 and PO4. PO3 was a black male. PO4 was a light-skinned Hispanic male, who was shorter than 5'11" and fat, with facial hair that was re-growing. PO Caron and PO Ruger tried to put § 87(2)(b) in the police car but he sat down. He was stood up and then unidentified officers pushed § 87(2)(b) down. Several officers jumped on him. PO3 pushed his fist against § 87(2)(b)'s cheek and pushed his knee into § 87(2)(b)'s shoulder. An officer put his knee against § 87(2)(b)'s back but he doesn't know who did it as he was face-down. Other unidentified officers kicked § 87(2)(b) and stood on § 87(2)(b)'s ankles and feet. Officers stood § 87(2)(b) up again and when he was walking to the police car, he put his foot against the back of the car to resist being put into the car. An unidentified officer took § 87(2)(b) by his neck and tried to shove him into the car while PO4 twisted his arm. § 87(2)(b) conceded defeat and allowed himself to be put into the car, but only his upper body was in the car. As he tried to rearrange himself to fit his entire body into the car, an officer kicked his feet to get him into the car.

§ 87(2)(b) was driven to the stationhouse. At the stationhouse, § 87(2)(b) was taken to a back room by five officers, including PO Ruger, PO Caron, PO3, PO4 and one other officer for whom § 87(2)(b) could provide no description, where they started to strip him, "pulling me apart like a rag doll." In the back room, these officers forcibly took off his belt, socks, jeans and sneakers and started to pull off his long johns. PO Ruger and PO Caron held his arms. An officer pushed § 87(2)(b) into the radiator. The officers physically lifted § 87(2)(b) off the ground, with one officer taking each leg. § 87(2)(b) was not kicking or otherwise moving; he could not do so as he was not on the ground. Officers banged § 87(2)(b)'s sneakers against the radiators and his legs. They pulled his long johns nearly off, but stopped prior to reaching his boxers when they realized he had no contraband underneath his pants. Officers then put § 87(2)(b)'s clothes back on, failing to fully lower his long underwear, leaving it clumped underneath his jeans. Leg shackles were attached to § 87(2)(b) and he was walked to a holding cell, where he was shackled to a bench.

§ 87(2)(b) was kept in a holding cell for almost an hour, until he was brought out to be fingerprinted. While in the cell, he felt increasingly woozy and he was very angry. Officers asked him if he was ready to be fingerprinted and § 87(2)(b) told them he was not as he was so angry that he did not want to see any of their faces. After ten or twenty minutes, § 87(2)(b) was asked this question again and he said yes. While § 87(2)(b) was being fingerprinted in the stationhouse, he passed out, falling on the floor. When he came to a minute or two later, § 87(2)(b) started vomiting. He was taken for medical treatment at § 87(2)(b) in an ambulance, handcuffed to the gurney, accompanied by PO Caron and PO Ruger.

Results of Investigation

Attempts to Locate Witnesses

A search of yellowpages.com and the Taxi and Limousine Commission's website found that there are three car services with "Harlem" or "Malcolm" in their name operating in upper Manhattan. § 87(2)(g)

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Officer Statements:

PO Ruger, Arrest and Complaint Report

§ 87(2)(b) was arrested at 12:15 AM on February 22, 2009 at the north east corner of Lenox Avenue and West 137th Street in Manhattan by PO Lynn Ruger (encl. 7c-7g). He was charged with § 87(2)(b)

The supervisor on scene was Sgt. Abramson. § 87(2)(b) stated: "I'm gonna fuck you up...I'm gonna kill you and your family." The narrative reads: "At time and place of occurrence deft was subject of a vehicle stop, deft fought with officers and possessed a gravity knife."

PO Ruger, Stop and Frisk Report

§ 87(2)(b) was stopped at West 137th Street and Lenox Avenue in Manhattan at 12:05 AM on February 22, 2009 by PO Lynn Ruger after one minute of observation (encl. 7h-7i). § 87(2)(b) was suspected of robbery/ criminal possession of a weapon due to his "furtive movements" and "leaning up toward driver." Additional circumstances leading to the stop were "area has incidence of reported offense of type under investigation", "time of day, day of week, season corresponding to reports of criminal activity", "evasive, false or inconsistent response to officer's questions" and "changing directions at sight of officer."

§ 87(2)(b) was arrested and the following physical force was used: "hands on suspect", "suspect on ground", "handcuffing suspect." § 87(2)(b) was frisked due to his "furtive movements", "verbal threats of violence by suspect", "refusal to comply with officer's direction", "violent crime suspected" and "actions indicating engaging in violent crime." § 87(2)(b) was searched incidentally to his lawful arrest. § 87(2)(b)'s demeanor was described as "combative, fighting, irate, threatening" and he made numerous threats such as "I'm going to kill when I get out."

PO Ruger, CCRB Statement

PO Lynn Ruger was interviewed at the CCRB on July 17, 2009 (encl. 7j-7k). PO Ruger is a § 87(2)(b)-old white female with brown hair and hazel eyes who is 5'9" and weighs 155 pounds.

PO Ruger worked from 5:30 PM on February 21, 2009 to 2:05 AM on February 22, 2009. Her assignment was anti-crime, she was in plainclothes and she was working with PO Caron in an unmarked vehicle, RMP no. 437.

PO Ruger had the following memobook entries relating to this incident (encl. 7a-7b). At 12:10 AM on February 22, 2009: "1 under at 137+Lenox. § 87(2)(b) M/B/§ 87(2)(b) in confines of 32 PCT." At 12:29 AM, "84 [arrived] at 32 PCT for A/P [arrest processing]." At 2:40 AM, "from 32 PCT to § 87(2)(b) At 3:00 AM, "84 at § 87(2)(b) for psych/medical treatment for deft." At 7:00 AM, "from § 87(2)(b) to MCB [Manhattan Central Booking]." At 7:30 AM, "84 at MCB."

On February 22, 2009 at about 12:10 AM, PO Ruger was sitting in the passenger's seat and PO Caron was in the driver's seat. While driving north-bound on Lenox Avenue, they pulled up behind a Crown Victoria livery cab from an unknown company, which was stopped due to a red light. PO Ruger noticed a male sitting in the back passenger seat, identified as § 87(2)(b) § 87(2)(b) was leaning towards the driver and there was no partition in the car. PO Ruger could not see § 87(2)(b) hands at this time. PO Ruger could not specify how close § 87(2)(b) was to the driver but stated that § 87(2)(b) was not touching the driver. The light turned green and the livery taxi did not move, which made PO Ruger believe that there was an immediate threat to the driver's safety. PO Caron gave a quick whoop of the sirens and the livery taxi then moved forward, making a left turn. The officers put on their sirens and pulled the livery

taxi over after it made a left turn. The area is prone to robberies and as an anti-crime officer, PO Ruger regularly deals with car robberies at gun point. PO Ruger mentally prepared to conduct a safety check as soon as she saw § 87(2)(b) lean forward and the livery taxi not move when the light turned green.

PO Caron approached the driver, who was a white Hispanic male, while PO Ruger approached § 87(2)(b). PO Ruger could see the fear on the livery taxi driver's face when she approached his car. PO Ruger stated that she had asked the livery taxi driver if a robbery had been taking place and he said "no". § 87(2)(b) had his legs braced against the front passenger seat when PO Ruger approached and had his left hand, which was farthest from PO Ruger, against his left side in a manner which, in conjunction with the look of fear on the driver's face, made PO Ruger suspect that § 87(2)(b) had a weapon. § 87(2)(b) was not wearing a seatbelt. § 87(2)(b) was immediately irate. He was yelling and cursing, saying things like "What the fuck are you stopping me for?" PO Ruger did not recall his exact words. PO Ruger stated that § 87(2)(b) was under arrest for disorderly conduct at the time of approach, as soon as he used profanity. PO Ruger did not notice any bystanders to this cursing, other than the livery taxi driver, and § 87(2)(b) was inside the livery taxi at this point.

PO Ruger told § 87(2)(b) to get out of the vehicle and he stated that he would not get out of the vehicle. PO Ruger had PO Caron come around the car to provide her with assistance. PO Ruger then reached into the car and grabbed § 87(2)(b)'s right arm in an attempt to bring § 87(2)(b) out of the car. § 87(2)(b) resisted by bracing himself against the front passenger seat and put his hand near PO Ruger's face. PO Ruger thought § 87(2)(b) was going to try to head-butt her. PO Ruger grabbed § 87(2)(b) right arm and he pushed PO Ruger. PO Caron grabbed § 87(2)(b) and the officers engaged in "a tug of war" with § 87(2)(b) in an attempt to get him out of the car. A patrol car of uniformed officers going south-bound on Lenox Avenue made a U-turn, stopped and helped the officers take § 87(2)(b) out of the car. Once § 87(2)(b) was out of the car, this struggle continued. PO Caron and PO Ruger attempted to put § 87(2)(b)'s hands behind his back. § 87(2)(b) knocked PO Ruger's radio out of her hand, causing it to land ten feet away. PO Caron and PO Ruger then brought § 87(2)(b) to the ground, at which point they put § 87(2)(b)'s hands behind his back and they handcuffed him. PO Ruger could not recall if she or PO Caron placed the handcuffs on § 87(2)(b). After § 87(2)(b) had been handcuffed and placed in the RMP, PO Ruger went back to the livery taxi and noticed a knife on the back passenger seat. PO Ruger asked the livery taxi driver if he had done an inventory search since the last passenger. As the driver replied that he had done an inventory search, PO Ruger attributed this knife to § 87(2)(b).

§ 87(2)(b) was frisked and searched after he was arrested. § 87(2)(b) was probably searched in the field and he was definitely searched at the station house, but PO Ruger did not recall if she was the officer who performed either search. PO Ruger did not push § 87(2)(b) against the car, did not knee him in the back while he was on the ground, did not kick his feet while he was entering their RMP and did not push him against the radiator in the station house. PO Ruger did not recall twisting § 87(2)(b)'s arm while handcuffing him.

SGT Abramson, CCRB Statement

Sergeant Robert Abramson was interviewed at the CCRB on August 12, 2009 (encl. 8b-8d). Sgt. Abramson is a § 87(2)(b)-old white male with brown hair and brown eyes who is 5'7" and weighs 170 pounds.

Sgt. Abramson worked from 5:26 PM on February 21, 2009 to 2:10 AM on February 22, 2009. Sgt. Abramson was working as the anti-crime supervisor with PO Sepulveda and PO Acevedo in an unmarked car and was in plainclothes.

Sgt. Abramson had the following memobook entries regarding this incident (encl. 8a). At 12:15 AM on February 22, 2009: "10-85 PO Ruger + Caron re: 1 under @ 137/Lenox re: § 87(2)(b). At 0:25 AM, "62A [administrative] at 32 in re: 92C [criminal arrest]." At 00:45 AM, "10-98 (defendant searched in rear cells by PO Caron w/ me, Acevedo, Sepulveda). 10-84 defendant remained cuffed due to verbal threats + combative behavior." At 2:00 AM, "62A @ 32 defendant refused prints." At 3:10 AM: "defendant agreed to be printed but upon being uncuffed @ livescan defendant appeared light-headed

stated felt sick + started to vomit. Bus ordered.” At 3:12 AM, “EMS 10-84 @ 25 [Sgt. Abramson stated he meant to write 32] cells with A/O partner + me.” At 3:25 AM: “PO Caron to follow bus to § 87(2)(b) in 437. A/O Ruger in back of bus w/ defendant. Me= 62A @ 32.”

At about 12:15 AM on February 22, 2009, Sgt. Abramson responded to a 10-85, or request for assistance, put over the radio by PO Ruger and PO Caron, who were at 137th and Lenox Avenue in Manhattan. At the point at which he arrived, PO Ruger and PO Caron were trying to handcuff the defendant, identified as § 87(2)(b) who was on the back bumper of a livery taxi. PO Ruger, PO Caron and § 87(2)(b) all appeared tired. § 87(2)(b) was yelling, cursing, flailing his arms and wouldn’t give his arms. Sgt. Abramson thought § 87(2)(b) was trying to get away or possibly strike the officers. § 87(2)(b) was making statements such as “get the fuck off of me” and “I’m gonna fuck you up”. At the time, Sgt. Abramson arrived on scene, additional officers from both the 32nd precinct and Patrol Borough Manhattan North had responded to the scene, but Sgt. Abramson did not recall which officers had responded to the scene.

Upon arriving on scene, Sgt. Abramson took over and hand-cuffed § 87(2)(b) quickly with the assistance of PO Acevedo and Sepulveda. Officers only used force to get his hands behind his back. Sgt. Abramson did not see officers knee § 87(2)(b) kick him or punch him in the cheek. Sgt. Abramson did not recall if § 87(2)(b) was brought to the ground, but he thought that § 87(2)(b) was brought from the back to the livery taxi and put against the back bumper or the front of his car.

After handcuffing § 87(2)(b) Sgt. Abramson frisked § 87(2)(b) probably went through his pockets and placed him in his car. This frisk and search did not yield any contraband. § 87(2)(b) did not put up major resistance to being placed in the car, as he was tired. § 87(2)(b) was never shoved into the car by his neck. PO Caron and PO Ruger told Sgt. Abramson that § 87(2)(b) was being arrested for a knife and he told them that he would see them at the 32nd precinct. Sgt. Abramson then transported § 87(2)(b) to the 32nd PCT.

Sgt. Abramson was told by PO Caron and PO Ruger that they had stopped the livery cab containing § 87(2)(b) because he was leaning over the driver and they wanted to make sure the driver was safe. Sgt. Abramson did not speak to the livery cab owner. Sgt. Abramson and his officers had been assigned to patrol the 32nd PCT at the time of this incident because there had been a spike in robberies. PO Caron or PO Ruger stated that § 87(2)(b) wouldn’t give them his hands when he was in the livery taxi and that they had found a knife in the livery taxi before Sgt. Abramson had responded to the scene.

At the 32nd precinct, § 87(2)(b) was strip-searched in a rear cell shortly after arriving at the station house. PO Acevedo, PO Sepulveda, PO Caron and Sgt. Abramson were present for this as § 87(2)(b) had been combative. They removed § 87(2)(b)’s handcuffs and had him remove his clothing. PO Caron examined each item of clothing and then handed it back to § 87(2)(b). § 87(2)(b) was not combative at this time and did not resist in any manner. No officer pushed § 87(2)(b) into a radiator at the station house. Sgt. Abramson authorized this strip search.

Sgt. Abramson authorized a strip search for the following reasons: A) the arresting officers stated that § 87(2)(b) had placed his hand behind his back in the cab, which is where he placed the knife and B) based on his combative behavior, § 87(2)(b) might have had additional contraband on his person. Sgt. Abramson did not have a suspicion as to what kind of contraband § 87(2)(b) might have been secreting on his person. Sgt. Abramson stated that usually he put a notation in the command log of a strip search, but upon reviewing the command log, he noticed that he had forgotten to do so on this occasion.

Prior to § 87(2)(b) vomiting, Sgt. Abramson had not noticed any sign of § 87(2)(b) being injured. Sgt. Abramson did not recall any officers being injured as a result of this incident.

PO Caron, CCRB Statement

PO Steven Caron was interviewed at the CCRB on July 30, 2009 (encl. 9c-9d). PO Caron is a § 87(2)(b)-old white male who is bald and has blue eyes. He is 5’9” tall and weighs 175 pounds.

PO Caron worked from 5:30 PM on February 21, 2009 to 2:30 AM on February 22, 2009. PO Caron was assigned to anti-crime, was in plainclothes and was working with PO Lynn Ruger in unmarked vehicle 437.

PO Caron had the following memobook entries relating to this incident (encl. 9a-9b). At 12:10 AM on February 22, 2009: "1 under by PO Ruger from W 137 St and Lenox Ave." At 1:30 AM, "Statement by perp: I am going to kick your ass if you take these cuffs off. Perp made this statement numerous times."

PO Caron was driving north-bound on Lenox Avenue in Manhattan with PO Ruger in the passenger seat at about 12:10 AM on February 22, 2009, when they pulled up behind a livery taxi at 135th street. The passenger of the livery cab was sitting in the middle of the back seat, leaning forward towards the driver, and there was no partition in the taxi. From PO Caron's vantage point, he could not tell exactly how close the passenger was to the driver. PO Caron does not recall the name of the livery cab service. When the light turned green, the livery taxi did not move. PO Caron did not recall how long the livery taxi stayed stationary at the light. PO Caron hit the horn of the RMP, which activated the car siren, and the livery taxi then started to move. When PO Caron hit the siren, the passenger looked back and then moved back, away from the driver, which looked suspicious to PO Caron and PO Ruger. PO Caron used the lights on his unmarked vehicle to pull the livery taxi over at approximately 137th and Lenox Avenue on suspicion that a robbery was taking place. PO Caron is aware of robberies of livery taxis occurring in the vicinity of West 137th and Lenox Avenue, but PO Caron has not arrested any individuals for robbery of a livery taxi in this area.

PO Caron and PO Ruger exited their vehicle. PO Caron approached the driver and PO Ruger approached the passenger, identified as § 87(2)(b). When they pulled over the livery taxi, § 87(2)(b) moved over to the right hand of the taxi. Before PO Caron had a chance to speak to the driver, he went over to assist PO Ruger as § 87(2)(b) was yelling and using profanities. § 87(2)(b) had braced himself with his right arm and one of his legs against the door frame of the back passenger seat and refused requests by both PO Caron and PO Ruger to step out of the vehicle. § 87(2)(b) had his left hand by his side and appeared to be tucking something beneath the seat of the taxi. After § 87(2)(b) had refused multiple requests by PO Caron and PO Ruger to exit the car, they pulled § 87(2)(b) from the livery taxi with their hands. § 87(2)(b) was bracing himself against the car, swinging and kicking at the officers. PO Caron did not recall any of these kicks or punches connecting. At the time he was pulled out of the car, § 87(2)(b) was under arrest for disorderly conduct and obstruction of governmental administration. § 87(2)(b) was under arrest for disorderly conduct as he was screaming, cursing and generally acting in a tumultuous manner.

After PO Caron and PO Ruger got § 87(2)(b) out of the car, he continued to fight with PO Caron and PO Ruger in the street by refusing to place his arms behind his back, trying to pull away from officers and flailing his arms. Uniformed officers whom PO Caron did not know by name or command stopped to assist the officers in subduing § 87(2)(b). Officers from Patrol Borough Manhattan North Anti-Crime also later responded to the scene, including Sgt. Abramson. PO Caron did not recall when § 87(2)(b) was handcuffed or if he was ever put against the car or brought to the ground.

At some point during this incident, a crowd of over five individuals formed in the street. PO Caron did not recall when he first noticed this crowd. PO Caron never spoke to the livery taxi driver as he was not the arresting officer. PO Ruger also told him that she had recovered a gravity knife from under the seat of the livery taxi after § 87(2)(b) had been placed in handcuffs, but he did not witness this.

PO Caron did not recall pushing § 87(2)(b) against the car, twist his arm, place his knee on § 87(2)(b)'s back, kick § 87(2)(b)'s feet or push him against a radiator in the station house. PO Caron recalled struggling with § 87(2)(b) to get him into custody but could not specify the force used.

PO Sepulveda and PO Acevedo, CCRB Statements

PO James Sepulveda was interviewed at the CCRB on September 2, 2009 (encl. 10c-10d) and PO Wilfredo Acevedo was interviewed at the CCRB on September 16, 2009 (encl. 11c-11d). PO Sepulveda is a § 87(2)(b) -

old Hispanic male with black hair and brown eyes who is 5'5" and weighs 195 pounds. PO Acevedo is a § 87(2)(b) -old Hispanic male with black hair and brown eyes who is 6'0" tall and weighs 230 pounds. The statements of PO Acevedo and PO Sepulveda have been combined below, with discrepancies noted.

PO Sepulveda and PO Acevedo worked from 5:30 PM on February 21, 2009 to 2:05 AM on February 22, 2009. They were assigned to anti-crime, were in plain clothes and working in an unmarked black Chevy Impala with Sgt. Abramson. PO Sepulveda (encl. 10a-10b) and PO Acevedo (encl. 11a-11b) had no memo book entries relating to this incident.

On February 22, 2009, PO Sepulveda and PO Acevedo responded to a 10-85 radio call placed by PO Caron and PO Ruger at Lenox Avenue and West 137th street in Manhattan. PO Sepulveda and PO Acevedo did not recall whether there were uniformed officers from other commands on the scene. PO Sepulveda stated that at the time of his arrival, PO Caron and PO Ruger were attempting to arrest a male, identified as § 87(2)(b) against a car. § 87(2)(b) was resisting by refusing to let his arms be placed behind his back. § 87(2)(b) was eventually handcuffed despite this resistance, but PO Sepulveda did not recall who handcuffed § 87(2)(b). PO Acevedo stated that when they arrived on scene, § 87(2)(b) was already handcuffed, although he had not yet been placed in a vehicle. PO Acevedo did not recall if § 87(2)(b) was standing or on the ground. PO Acevedo did not recall § 87(2)(b) providing any resistance.

PO Acevedo and PO Sepulveda did not knee § 87(2)(b) in the shoulder, push his fist against § 87(2)(b)'s cheek, kick him or push him against a radiator in the station house. PO Acevedo and PO Sepulveda did not witness any other officer do these things or bring § 87(2)(b) to the ground. PO Acevedo and PO Sepulveda did not have any physical interaction with § 87(2)(b).

At the 32nd precinct station house, § 87(2)(b) was cursing loudly enough that PO Sepulveda could hear him cursing in the cells from the front desk. § 87(2)(b) also made threats against officers at the station house, but PO Sepulveda did not recall the threats made by § 87(2)(b).

PO Sepulveda and PO Acevedo observed the strip search of § 87(2)(b) at the 32nd precinct. They were ordered to do so by SGT Abramson, who also present for the strip search, in case § 87(2)(b) became non-compliant or violent. PO Sepulveda stated there were three or four other officers present for the strip search of § 87(2)(b). PO Acevedo did not recall which other officers were present for the strip search. PO Acevedo and PO Sepulveda did not recall § 87(2)(b) resisting the strip search.

Medical Records:

Ambulance Call Report

An ambulance arrived at the 32nd precinct stationhouse at 3:12 AM on February 22, 2009 and transported § 87(2)(b) to § 87(2)(b) arriving at 3:49 AM (encl. 12a-12b). The presumptive diagnosis by EMS states: "Patient in custody unreadable cause of nausea and 1 episode of vomiting...Verbally abusive to crew and PD. Extremely agitated....Restrained by PD. Negative signs of trauma." § 87(2)(b)'s chief complaint is listed as: "I feel nauseous."

§ 87(2)(b)

§ 87(2)(b) was transported to § 87(2)(b) as a prisoner on February 22, 2009, at 3:54 AM (encl. 13a-13g). He was brought for medical clearance by the NYPD. On the discharge report, § 87(2)(b)'s statement is reported as: "I vomited because [I] was so upset, now [I'm] all right." A psychiatric consultation deemed that there was "no indication for psychiatric treatment at this time." § 87(2)(b) had lacerations, abrasion and contusions to his wrists and complained of pain due to the handcuffs.

Police Records:

SPRINT Index

There are no SPRINTS for this incident.

Command Log, 32nd PCT

§ 87(2)(b) was brought in as an arrest by PO Ruger at 12:20 AM on February 22, 2009 (encl 14).
§ 87(2)(b) was charged with “§ 87(2)(b).” § 87(2)(b) s condition is described as “combative” and the remarks state that “bus ordered when defendant started to vomit...defendant to § 87(2)(b) with A/O in bus + PO Caron following in 437 @ 0325.” There is no notation of a strip search.

Roll Call, PBMN AC

Sgt. Abramson worked as anti-crime supervisor from 5:26 PM on February 21, 2009 to 2:10 AM on February 22, 2009 in auto no. 951 (encl. 15a-15g). PO Caron, PO Ruger, PO Sepulveda and PO Acevedo worked from 5:30 PM on February 21, 2009 to 2:05 AM on February 22, 2009. PO Caron and PO Ruger were in auto no. 437 while PO Sepulveda and PO Acevedo were in auto no. 951. All aforementioned officers were assigned to the 32nd precinct auto larceny zone.

Property Vouchers

§ 87(2)(b) had a black handle gravity knife, green ipod, black cell phone charger, black headphones, Virgin Mobile cell phone and Kyocera cell phone battery vouchered in connection with this arrest (encl. 16a-16c).

Criminal Court Complaint

§ 87(2)(b) was charged with § 87(2)(a) 160.50, § 87(2)(b) (encl. 17a-17b). PO Ruger gave the following deposition for this incident: “§ 87(2)(a) 160.50, § 87(2)(b)

§ 87(2)(b) was charged with § 87(2)(a) 160.50, § 87(2)(b) (encl. 17a-17b). PO Ruger gave the following deposition for this incident: “§ 87(2)(a) 160.50, § 87(2)(b)

Civilian Criminal Conviction History

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Officer CCRB History

In her four years as a member of service, PO Caron has had no substantiated CCRB allegations (encl. 2a). In his 15 year tenure, Sgt. Abramson has had no substantiated CCRB allegations (encl. 2b).

Civil Lawsuit

No notice of claim has been filed for this incident (encl. 20a-20b).

Disposition of Criminal Case

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Conclusions and Recommendations

Officer Identification

PO Caron and PO Ruger were identified as the initial officers on scene by their own statement. Sgt. Abramson, PO Sepulveda and PO Acevedo were identified as having responded to the scene by their own statements. § 87(2)(g)

As no officer interview could name the uniformed officers who responded to the scene and there was no SPRINT, the uniformed officers present for this incident could not be identified. § 87(2)(g)

Undisputed Facts

It is undisputed that the livery taxi containing § 87(2)(b) was stopped by PO Caron and PO Ruger. It is undisputed that § 87(2)(b) was under arrest before he exited the livery taxi. It is undisputed that § 87(2)(b) was strip-searched at the 32nd precinct.

Disputed Facts

§ 87(2)(g)

Assessment of Evidence

§ 87(2)(b) alleged that following his placement in handcuffs, a black male officer pushed his fist against § 87(2)(b)'s cheek and pushed his knee into § 87(2)(b)'s shoulder. § 87(2)(b) also alleged that officers whom he could not identify place their knee on his back, stood on him and kicked him at the scene and pushed him into the radiator at the station house. § 87(2)(g)

PO Ruger stated at the time she placed § 87(2)(b) under arrest, there were no bystanders to this incident. PO Caron stated that at some point during this incident, a small crowd of people gathered. § 87(2)(g)

§ 87(2)(b) stated that PO Ruger was present when he was strip-searched at the 32nd precinct. However, as he also stated that he was so upset at being arrested that he refused to be fingerprinted and later passed out and vomited, his recollection of this part of the incident is suspect. PO Ruger did not recall if she was involved in any search of § 87(2)(b) at the 32nd precinct. Sgt. Abramson stated that PO Ruger was not involved in this strip search and had a memo book entry listing the officers present, in which she was not included. § 87(2)(g)

§ 87(2)(g)

Allegations Not Pleaded

§ 87(2)(g)

§ 87(2)(g)

Allegation A. Officers stopped the car in which § 87(2)(b) was an occupant.

It is undisputed that PO Ruger and PO Caron pulled over the livery taxi in which § 87(2)(b) was an occupant. § 87(2)(g)

In *New York Search and Seizure*, Barry Kamins states that “an officer will be justified in stopping an automobile when he observes objective evidence evincing criminal activity. For example, certain actions by a taxi or livery cab driver will indicate to a trained police officer that the driver is in distress. Thus, an officer is permitted to stop a cab when the drivers uses high beams or no headlights, drives erratically, commits certain types of traffic violations, or makes frantic hand signals. These actions, combined with an officer’s knowledge that there have been numerous other cab robberies in the area, justify a reasonable suspicion of criminal activity” (encl. 1a-1b).

§ 87(2)(g)

Allegation B. PO Lynn Ruger arrested § 87(2)(b)

It is undisputed that § 87(2)(b) was under arrest before he exited the livery taxi. § 87(2)(g)

New York State Penal Law 240.20 (3) reads as follows: “A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof...3. In a public place, he uses abusive or obscene language” (encl. 1c).

The New York State Court of Appeals held in *People v. Tichenor*, 89 N.Y.2d 769 (1997) that arrests for disorderly conduct based merely upon the use of profanity are invalid unless there is evidence of intent to create a risk of public disorder (encl. 1d-1i). The Court of Appeals ruled that the disorderly conduct statute does not violate the First Amendment to the U.S. Constitution because it “applies to words and conduct reinforced by a culpable mental state to create a public disturbance, and does not circumscribe pure speech directed at an individual” (encl. 1e). Barry Kamins states that “the Court of Appeals has acknowledged that the question of *when* an arrest occurs in a street encounter is of great significance; whatever occurs *after* the arrest may not be used to validate an arrest that was not based on probable cause” (encl. 1j).

§ 87(2)(g)
[Redacted]
[Redacted]
[Redacted]
[Redacted]

§ 87(2)(g)
[Redacted]
[Redacted]

§ 87(2)(g)
[Redacted]
[Redacted]
[Redacted]
[Redacted]

§ 87(2)(g)
[Redacted]
[Redacted]
[Redacted]

Allegation C. Officers used physical force against § 87(2)(b)

§ 87(2)(g)
[Redacted]
[Redacted]
[Redacted]

Allegation D. SGT Robert Abramson authorized the strip search of § 87(2)(b)

It is undisputed that Sgt. Abramson authorized the strip search of § 87(2)(b) § 87(2)(g)
[Redacted]

Patrol Guide Procedure 208-05 states that a strip search will only be conducted when “the arresting officer reasonably suspects that weapons, contraband or evidence may be concealed upon the person or in the clothing in such a manner that they may not be discovered by the previous search methods” (encl. 1k-1m)

PO Caron and PO Ruger saw § 87(2)(b) apparently hide something in the livery taxi when they approached and later discovered a gravity knife where he had placed his hand. § 87(2)(g)
[Redacted]
[Redacted]
[Redacted]
[Redacted]

§ 87(4-b) § 87(2)(g)
[Redacted]

[Redacted]
[Redacted]

[Redacted]
[Redacted]
[Redacted]

[Redacted]
[Redacted]
[Redacted]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: